

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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AMERICAN CIVIL LIBERTIES UNION,  
CENTER FOR CONSTITUTIONAL RIGHTS,  
PHYSICIANS FOR HUMAN RIGHTS,  
VETERANS FOR COMMON SENSE, and  
VETERANS FOR PEACE,

Plaintiffs,

v.

04 Civ. 4151 (AKH)

DEPARTMENT OF DEFENSE, AND ITS  
COMPONENTS DEPARTMENT OF ARMY,  
DEPARTMENT OF NAVY, DEPARTMENT OF  
AIR FORCE, DEFENSE INTELLIGENCE  
AGENCY; DEPARTMENT OF HOMELAND  
SECURITY; DEPARTMENT OF JUSTICE,  
AND ITS COMPONENTS CIVIL RIGHTS  
DIVISION, CRIMINAL DIVISION,  
OFFICE OF INFORMATION AND PRIVACY,  
OFFICE OF INTELLIGENCE POLICY AND  
REVIEW, FEDERAL BUREAU OF  
INVESTIGATION; DEPARTMENT OF STATE;  
and CENTRAL INTELLIGENCE AGENCY,

Defendants.

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**SEVENTH DECLARATION OF MARILYN A. DORN  
INFORMATION REVIEW OFFICER  
CENTRAL INTELLIGENCE AGENCY**

I, MARILYN A. DORN, hereby declare and say:

1. I am the Information Review Officer (IRO) for the  
National Clandestine Service (NCS)<sup>1</sup> of the Central  
Intelligence Agency (CIA). This is my seventh declaration

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<sup>1</sup> NCS is the successor to the Directorate of Operations (DO).

in this case. This declaration incorporates by reference my previous declarations submitted in this case dated 15 October 2004, 16 February 2005, 9 March 2005, 30 March 2005, 15 July 2005, and 5 August 2005.

2. As stated in my declaration dated 15 October 2004, as a senior CIA official and under a written delegation of authority pursuant to Section 1.3(c) of Executive Order 12958, as amended,<sup>2</sup> I hold original classification authority at the TOP SECRET level. Therefore, I am authorized to conduct classification reviews and to make original classification and declassification decisions.

3. I make the following statements based upon my personal knowledge and information made available to me in my official capacity.

4. The purpose of this declaration is to describe, to the greatest extent possible on the public record, the CIA's position with respect to records from the CIA's Office of Inspector General ("OIG") that no longer relate to pending law enforcement proceedings and are responsive to Plaintiffs' May 25, 2004 Freedom of Information Act ("FOIA") request. As explained below, the 227-page Vaughn

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<sup>2</sup> Executive Order 12958 was amended by Executive Order 13292, effective March 25, 2003. See Exec. Order No. 12958, 3 C.F.R. 333 (1995), *reprinted as amended* in 50 U.S.C.A. § 435 note at 91 (Supp. 2004). All citations to Executive Order No. 12958 are to the Order as amended by Executive Order No. 13292.

index and related 8-page Summary List of Documents in the Vaughn index, both of which are attached to this declaration, addresses a sample of the records at issue.

5. By letter dated April 15, 2005, the CIA provided plaintiffs with an administrative response concerning records in OIG files responsive to plaintiffs' May 25, 2004, FOIA request for records since September 11, 2001, pertaining to "the treatment of Detainees in United States custody; the deaths of Detainees in United States custody; and, the rendition of Detainees and other individuals to foreign powers known to employ torture or illegal interrogation techniques." The CIA's April 15, 2005 response stated that all of the records in OIG files that pertain to ongoing investigations were withheld in their entirety pursuant to FOIA exemption (b)(7) because their disclosure could reasonably be expected to interfere with a pending investigation or law enforcement proceeding. The CIA's response also stated that FOIA exemptions (b)(1), (b)(2), (b)(3), (b)(5), and (b)(6) applied to the records contained in OIG files that pertain to ongoing investigations.

6. The CIA's April 15, 2005 response also addressed records that no longer relate to pending law enforcement proceedings. The CIA stated that it had not completed its

document-by-document, word-by-word review of these documents, but that it expected to complete processing of the OIG records that no longer relate to pending law enforcement proceedings by July 15, 2005.

7. On July 15, 2005, the CIA sent plaintiffs a final administrative response with respect to the OIG records that no longer relate to pending law enforcement proceedings. The July 15, 2005 response stated that the records were withheld in their entirety pursuant to FOIA exemptions (b)(1), (b)(2), (b)(3), (b)(5), and (b)(6). The CIA's July 15, 2005 response further stated that certain OIG records that no longer relate to pending law enforcement proceedings had been referred to other agencies for review and coordination.

8. The parties then negotiated an agreement whereby the CIA would provide a declaration that explains, to the greatest extent possible on the public record, why the OIG records that no longer relate to pending law enforcement proceedings were withheld in their entirety. Pursuant to that agreement, the CIA agreed to address a sample of the approximately 1,500 documents at issue, which totaled approximately 7,500 pages and were divided into four categories: cables, e-mails, interview reports, and "other" or miscellaneous documents that did not fit into

any particular category. Specifically, the CIA agreed to complete a Vaughn index for every second "other" document, every tenth interview report, every thirtieth cable and every fiftieth e-mail in its declaration. The parties further agreed that the Court's rulings with respect to this representative sample of documents addressed in the declaration would be applied to the records that were not included in the sample.

9. To ensure that a random sample was addressed in the declaration, the CIA arranged each set of documents in date order (with the exception of some undated documents in the "other" category, which were grouped together at the end), numbered them, and invited plaintiffs to select the starting point for the documents to be indexed in each category. Plaintiffs asked the CIA to begin with the third interview report, the third cable, the seventh e-mail and the first miscellaneous document. Thus, for example, the CIA included every tenth interview report in the declaration beginning with the third interview report (*i.e.*, the third, thirteenth, twenty-third, thirty-third, etc.).<sup>3</sup>

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<sup>3</sup> Nineteen e-mails were inadvertently left out of the e-mail collection when the collection was numbered. These e-mails were subsequently inserted in their proper date order within the collection, and marked with the same number as the preceding e-mail, plus a lower-case letter to individually distinguish it within the collection. These e-mails

10. As explained in greater detail in the attached index, all of the records included in the sample were withheld in their entirety pursuant to FOIA exemptions (b)(1), (b)(2), (b)(3), and (b)(5). For the Court's convenience, I have attached the unclassified Vaughn index of the documents as an exhibit to this declaration. I hereby incorporate by reference my explanations of the specific FOIA Exemptions, as previously set forth in my 30 March 2005 declaration, claimed herein.

11. I also understand that plaintiffs have in the past argued that information was improperly classified because it allegedly dealt with "illegality." The CIA does not classify information to conceal violations of law. Moreover, in this case, I have not classified any information in order to conceal violations of law. Where otherwise properly classified records might contain information about possible violations of law, the CIA provides information to the appropriate oversight committees and law enforcement entities. Nothing in Executive Order 12958, however, prevents the CIA from

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are: 30-a, 38-a, 98-a,b,&c, 123-a, 138-a, 144-a, 187-a&b, 193-a, 325-a, 389-a, 445-a, 492-a, 494-a, 614-a, 718-a, and 730-a. As a result, while the e-mail sample consists of every fiftieth document beginning with the number seven as per the agreement with plaintiffs, the actual document numbers in the sample do not all end with the numeral seven. (e.g., the first document in the sample, number seven, is not followed by document number fifty-seven, because e-mails 30-a and 38-a were counted as well - producing document number fifty-five instead).



protecting classified information that might also reveal a violation of law where, as here, there is an independent basis for classifying the information -- protecting intelligence sources, methods, and activities, as well as foreign government information and foreign relations of the United States, whose disclosure reasonably could be expected to cause damage to the national security.

12. These OIG documents that no longer relate to pending law enforcement proceedings have been denied in full because I have determined that no meaningful, reasonably segregable portion of those documents could be released. The determination of segregability was made based upon a careful review of the documents in this case, both individually, and as a whole.<sup>4</sup> Indeed, a line-by-line review was conducted for all the documents, individually and as whole, at issue to identify and release meaningful, reasonably segregable, non-exempt portions of documents. Any non-exempt information is so inextricably intertwined with the exempt information that there are no meaningful, reasonably segregable, non-exempt portions. Therefore, I

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<sup>4</sup> In making this determination I must consider the entire mosaic of information available, including information that may be publicly available in other cases or available to our adversaries through their intelligence activities, to determine if any releases would reveal classified information.

determined that there are no meaningful segments of  
information that reasonably can be segregated for release.

\* \* \* \*

I hereby declare under penalty of perjury that the  
foregoing is true and correct.

Executed this 27th day of January, 2006.

A handwritten signature in black ink, appearing to read 'M. Dorn', is written over a horizontal line.

Marilyn A. Dorn  
Information Review Officer  
Central Intelligence Agency